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\*\*\* Bill No. \*\*\*

Introduced By \*\*\*\*\*

A Bill for an Act entitled: "An Act providing for a voluntary certification program for workers' compensation claims examiners; amending sections 2-6-109 and 39-71-201, MCA; and providing an effective date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Voluntary certification program for claims examiners.** (1) Pursuant to the public policy stated in 39-71-105, accurate and prompt claims handling practices are necessary to provide appropriate service to injured workers, employers, and providers. In order to further that public policy, the purpose of this section is to authorize the department to establish a voluntary certification program for claims examiners. The department shall administer the voluntary certification program. The purpose of the voluntary certification program is to improve the handling of workers' compensation claims by:

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- (a) establishing minimum qualifications and procedures for certifying claims examiners;
- (b) requiring continuing education for certified claims examiners;
- (c) better educating certified claims examiners about changes in the law; and
- (d) providing standards for the qualification of instructors, courses, and materials.

(2)(a) The department shall adopt rules for the certification of workers' compensation claims examiners, providing for:

- (i) minimum qualifications;
- (ii) examination;
- (iii) 2-year certification and renewal; and
- (iv) continuing education requirements.

(b) The department's rules must provide that during the first 12 months after the department has adopted the initial rules implementing the claims examiner certification program, certification as a claims examiner may be granted without examination to a person who has actively engaged in the work of a claims examiner for Montana workers' compensation claims during 5 of the 7 years immediately preceding the person's application for

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certification as a claims examiner under this section.

After the 12 month period has expired, all applicants must take and pass the examination in order to receive certification.

(3) The department may appoint an advisory committee composed of injured workers, insurers, self-insured employers, third-party administrators, claims examiners, and members of the public to advise the department on setting standards for certification and continuing education.

(4) The department shall maintain a public list of all certified claims examiners.

(a) The department shall maintain records related to the certified claims examiner program, including:

(i) documentation of current and historical certifications;

(ii) beginning and ending dates of certifications;  
and

(iii) continuing education records for certified claims examiners.

(b) The department may not disclose information of a personal nature about certified claims examiners.

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(5) The department may approve a training curriculum used by insurers, self-insured employers and third party administrators that is related to the Montana workers' compensation system or interactions with injured workers, medical providers, and employers.

(a) Course content, instructors, material, instructional format, and the sponsoring organization must be approved by the department to qualify towards certification.

(b) The department shall determine the number of credit hours to be awarded for completion of an approved continuing education activity. The department may accept continuing education credits approved by the Montana Insurance Commissioner's office, State Bar of Montana, or Office of Public Instruction to satisfy the continuing education requirements for renewal of the claims examiner certification. The department, in its discretion, may also accept continuing education credits from other accredited sources.

(6) The department shall adopt by rule fees commensurate with the costs of administering the voluntary certification program. All fees collected by the department pursuant to this section must be deposited in

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the workers' compensation administration fund provided in 39-71-201, MCA. The department may charge a fee for matters related to the certification program, including but not limited to:

- (a) initial certification, including examination;
- (b) certification renewal;
- (c) approval of training curriculum, instructors, instructional format, course materials, and programs sponsors;
- (d) approval of continuing education courses, instructors, instructional format, course materials, and programs sponsors; and
- (e) specialized training offered by the department.

**Section 2.** Section 2-6-109, MCA, is amended to read:

**"2-6-109. Prohibition on distribution or sale of mailing lists -- exceptions -- penalty.** (1) Except as provided in subsections (3) through (9), in order to protect the privacy of those who deal with state and local government:

- (a) an agency may not distribute or sell for use as a mailing list any list of persons without first securing the permission of those on the list; and

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(b) a list of persons prepared by the agency may not be used as a mailing list except by the agency or another agency without first securing the permission of those on the list.

(2) As used in this section, "agency" means any board, bureau, commission, department, division, authority, or officer of the state or a local government.

(3) This section does not prevent an individual from compiling a mailing list by examination of records that are otherwise open to public inspection.

(4) This section does not apply to the lists of:

(a) registered electors and the new voter lists provided for in 13-2-115, ~~to lists of;~~

(b) the names of employees governed by Title 39, chapter 31, ~~to lists of;~~

(c) persons holding driver's licenses or Montana identification cards provided for under 61-5-127, ~~or to lists of;~~

(d) persons holding professional or occupational licenses governed by Title 23, chapter 3; Title 37, chapters 1 through 4, 6 through 29, 31, 34, 35, 40, 47, 48, 50, 51, 53, 54, 60, 65 through 69, 72, 73, and 76; and Title 50, chapters 39, 72, 74, and 76; or

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(e) persons certified as a claims examiner under  
[section 1].

(5) This section does not prevent an agency from providing a list to persons providing prelicensing or continuing educational courses subject to state law or subject to Title 33, chapter 17.

(6) This section does not apply to the right of access by Montana law enforcement agencies.

(7) This section does not apply to a corporate information list developed by the secretary of state containing the name, address, registered agent, officers, and directors of business, nonprofit, religious, professional, and close corporations authorized to do business in this state.

(8) This section does not apply to the use by the public employees' retirement board of a mailing list of board-administered retirement system participants to send materials on behalf of a retiree organization formed for board-administered retirement system participants and with tax-exempt status under section 501(c)(4) of the Internal Revenue Code, as amended, for a fee determined by rules of the board, provided that the mailing list is not released to the organization.

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(9) This section does not apply to a public school providing lists of graduating students to representatives of the armed forces of the United States or to the national guard for the purposes of recruitment.

(10) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor."

{Internal References to 2-6-109:  
19-2-403x 30-17-101x }

**Section 3.** Section 39-71-201, MCA, is amended to read:

**"39-71-201. Administration fund.** (1) A workers' compensation administration fund is established out of which are to be paid upon lawful appropriation all costs of administering the Workers' Compensation Act and the statutory occupational safety acts that the department is required to administer, with the exception of the certification of independent contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in 39-71-907, and the uninsured employers' fund provided for in 39-71-503. The department shall collect and deposit in the state treasury to the credit of the workers' compensation administration fund:



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(a) all fees and penalties provided in [section 1],  
39-71-107, 39-71-205, 39-71-223, 39-71-304, 39-71-307,  
39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205,  
and 39-71-2337; and

(b) all fees paid by an assessment of 3% of paid  
losses, plus administrative fines and interest provided by  
this section.

(2) For the purposes of this section, paid losses  
include the following benefits paid during the preceding  
calendar year for injuries covered by the Workers'  
Compensation Act without regard to the application of any  
deductible whether the employer or the insurer pays the  
losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of \$200,000  
for each occurrence that are exempt from assessment, total  
medical benefits paid for medical treatment rendered to an  
injured worker, including hospital treatment and  
prescription drugs.

(3) Each plan No. 1 employer, plan No. 2 insurer  
subject to the provisions of this section, and plan No. 3,  
the state fund, shall file annually on March 1 in the form

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and containing the information required by the department a report of paid losses pursuant to subsection (2).

(4) Each employer enrolled under compensation plan No. 1, compensation plan No. 2, or compensation plan No. 3, the state fund, shall pay a proportionate share of all costs of administering and regulating the Workers' Compensation Act and the statutory occupational safety acts that the department is required to administer, with the exception of the certification of independent contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in 39-71-907, and the uninsured employers' fund provided for in 39-71-503. In addition, compensation plan No. 3, the state fund, shall pay a proportionate share of these costs based upon paid losses for claims arising before July 1, 1990.

(5) (a) Each employer enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of the plan No. 1 employer or \$500, whichever is greater. Any entity, other than the department, that assumes the obligations of an employer enrolled under

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compensation plan No. 1 is considered to be the employer for the purposes of this section.

(b) An employer formerly enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of the employer for claims arising out of the time when the employer was enrolled under compensation plan No. 1.

(c) Payment of the assessment provided for by this subsection (5) must be paid by the employer in:

- (i) one installment due on July 1; or
- (ii) two equal installments due on July 1 and December 31 of each year.

(d) If an employer fails to timely pay to the department the assessment under this section, the department may impose on the employer an administrative fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(6) (a) Compensation plan No. 3, the state fund, shall pay an assessment to fund administrative and

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regulatory costs attributable to claims arising before July 1, 1990. The assessment is equal to 3% of the paid losses paid in the preceding calendar year for claims arising before July 1, 1990. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the assessment for administrative and regulatory costs that is attributable to claims arising before July 1, 1990.

(b) Payment of the assessment must be paid in:

(i) one installment due on July 1; or

(ii) two equal installments due on July 1 and December 31 of each year.

(c) If the state fund fails to timely pay to the department the assessment under this section, the department may impose on the state fund an administrative fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(7) (a) Each employer insured under compensation plan No. 2 or plan No. 3, the state fund, shall pay a premium surcharge to fund administrative and regulatory costs. The premium surcharge must be collected by each plan No. 2 insurer and by plan No. 3, the state fund, from each

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employer that it insures. The premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted to the insured employer and must be identified as "workers' compensation regulatory assessment surcharge". The premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes. However, an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as a separate cost imposed upon insured employers.

(b) The amount to be funded by the premium surcharge is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of all plan No. 2 insurers and 3% of paid losses for claims arising on or after July 1, 1990, for plan No. 3, the state fund, plus or minus any adjustments as provided by subsection (7)(f). The amount to be funded must be divided by the total premium paid by all employers enrolled under compensation plan No. 2 or plan No. 3 during the preceding calendar year. A single premium

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surcharge rate, applicable to all employers enrolled in compensation plan No. 2 or plan No. 3, must be calculated annually by the department by not later than April 30. The resulting rate, expressed as a percentage, is levied against the premium paid by each employer enrolled under compensation plan No. 2 or plan No. 3 in the next fiscal year.

(c) On or before April 30 of each year, the department, in consultation with the advisory organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and plan No. 3, the state fund, of the premium surcharge percentage to be effective for policies written or renewed annually on and after July 1 of that year.

(d) The premium surcharge must be paid whenever the employer pays a premium to the insurer. Each insurer shall collect the premium surcharge levied against every employer that it insures. Each insurer shall pay to the department all money collected as a premium surcharge within 20 days of the end of the calendar quarter in which the money was collected. If an insurer fails to timely pay to the department the premium surcharge collected under this section, the department may impose on the insurer an administrative fine of \$500 plus interest on the delinquent

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amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(e) If an employer fails to remit to an insurer the total amount due for the premium and premium surcharge, the amount received by the insurer must be applied to the premium surcharge first and the remaining amount applied to the premium due.

(f) The amount actually collected as a premium surcharge in a given year must be compared to the 3% of paid losses paid in the preceding year. Any amount collected in excess of the 3% must be deducted from the amount to be collected as a premium surcharge in the following year. The amount collected that is less than the 3% must be added to the amount to be collected as a premium surcharge in the following year.

(8) On or before April 30 of each year, upon a determination by the department, an insurer under compensation plan No. 2 that pays benefits in the preceding calendar year but that will not collect any premium for coverage in the following fiscal year shall pay an assessment equal to 3% of paid losses paid in the preceding

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calendar year, subject to a minimum assessment of \$500, that is due on July 1.

(9) An employer that makes a first-time application for permission to enroll under compensation plan No. 1 shall pay an assessment of \$500 within 15 days of being granted permission by the department to enroll under compensation plan No. 1.

(10) The department shall deposit all funds received pursuant to this section in the state treasury, as provided in this section.

(11) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, incurred while on the business of the department either within or without the state.

(12) Disbursements from the administration fund must be made after being approved by the department upon claim for disbursement.

(13) The department may assess and collect the workers' compensation regulatory assessment surcharge from



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uninsured employers, as defined in 39-71-501, that fail to properly comply with the coverage requirements of the Workers' Compensation Act. Any amounts collected by the department pursuant to this subsection must be deposited in the workers' compensation administration fund."

{*Internal References to 39-71-201:*

39-71-306x      39-71-306x      39-71-435x }

### NEW SECTION. **Section 4. {standard} Codification.**

[Section 1] is intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71 apply to [section 1].

### NEW SECTION. **Section 5. {standard} Effective date.**

[This act] is effective July 1, 2009.

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